

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Milardo	Team: Team # 2	CCRB Case #: 201211573	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/29/2012 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 60	18 Mo. SOL 2/28/2014	EO SOL 2/28/2014	
Date/Time CV Reported Thu, 08/30/2012 1:29 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/04/2012 11:33 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Scot Kashinsky	21885	947120	PSA 1
2. SGT Miguel Figueroa	03780	939822	PSA 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Osvaldo Castillo	04460	941518	PSA 1
2. POM Saidul Islam	24857	936798	PSA 1

Officer(s)	Allegation	Investigator Recommendation
A.SGT Miguel Figueroa	Abuse: Sgt. Miguel Figueroa threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
B.POM Scot Kashinsky	Force: PO Scot Kashinsky used physical force against § 87(2)(b).	§ 87(2)(b)
C.POM Scot Kashinsky	Abuse: PO Scot Kashinsky threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

Case Summary

On August 30, 2012, § 87(2)(b) filed a complaint with the Internal Affairs Bureau (IAB Log #12-46524) on behalf of her father, § 87(2)(b) and it was received by the CCRB on September 4, 2012. On August 29, 2012, at approximately 11:40 p.m., § 87(2)(b) was exiting § 87(2)(b) when he was approached by two officers in uniform. § 87(2)(b) was arrested with the top charge of tampering with physical evidence and the following allegations resulted:

- **Allegation A – Abuse of Authority: Sgt. Miguel Figueroa threatened § 87(2)(b) with the use of force.**
- **Allegation B – Force: PO Scot Kashinsky used physical force against § 87(2)(b).**
- **Allegation C – Abuse of Authority: PO Scot Kashinsky threatened § 87(2)(b) with the use of force.**

§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) a black man with black hair and brown eyes, stands 5'9" tall and weighs 170 pounds. He was § 87(2)(b) years old at the time of the incident. § 87(2)(b)

Statements to Medical Personnel (encl. E8)

On § 87(2)(b), § 87(2)(b) told a nurse at § 87(2)(b) that he did not ingest the drugs as accused.

CCRB Statement (encl. C7-C11)

§ 87(2)(b) was interviewed at § 87(2)(b) on Riker's Island on October 18, 2012.

On August 29, 2012, at approximately 11:00 p.m., § 87(2)(b) left his friend's apartment, which was in a NYCHA complex located at § 87(2)(b) to get a pack of cigarettes. § 87(2)(b) had a beer and snorted heroine two hours prior, but he did not have any alcohol or drugs on his person at this time. He exited the back door and two uniformed officers, identified via investigation as Sgt. Miguel Figueroa (described as a short Hispanic man of medium/muscular build with a gold badge and in his late thirties) and PO Scot Kashinsky (described as a 5'8" tall white man with a large build and sandy blonde hair in his mid- thirties), drove by in a marked police van. The officers stopped their car, exited and approached § 87(2)(b). Both officers asked § 87(2)(b) where he was coming from and he explained that he was leaving a friend's house. § 87(2)(b) may have accidentally provided the wrong apartment number. § 87(2)(b) also told the officers that he lived with his wife in a different building on the same premises.

Sgt. Figueroa asked for his identification and § 87(2)(b) provided it. PO Kashinsky took the identification and went into the building. Sgt. Figueroa tried to make conversation with § 87(2)(b) by asking what he was doing out there (implying on the streets), but he never made any

reference to drugs. After ten to fifteen minutes of talking, Sgt. Figueroa asked § 87(2)(b) to open his mouth. § 87(2)(b) did so and Sgt. Figueroa shined his flashlight into his mouth, asking § 87(2)(b) what he had. § 87(2)(b) said that he did not have anything and Sgt. Figueroa explained that as they pulled up in the van, they saw § 87(2)(b) put something in his mouth. Sgt. Figueroa then took out his asp and put it towards § 87(2)(b)'s face while saying, "Open your mouth or I'll put this in there." § 87(2)(b) felt that Sgt. Figueroa insinuated that he was going to hit him with the asp if he did not open his mouth, but he could not recall if the officer ever said this. § 87(2)(b) kept his mouth shut.

As this was happening, PO Kashinsky came back outside and said that nobody lived in the apartment that § 87(2)(b) said he came from and accused him of trespassing. Sgt. Figueroa told PO Kashinsky that § 87(2)(b) had something in his mouth. PO Kashinsky put his right thumb and index finger around § 87(2)(b)'s neck and squeezed, but his breathing was never restricted. § 87(2)(b) did not pull away or make any movements towards the officers. PO Kashinsky also said to Sgt. Figueroa and § 87(2)(b) that he should have punched § 87(2)(b) in the mouth, but § 87(2)(b) did not know why. Both officers yelled at § 87(2)(b) to not swallow the object and to spit it out, but § 87(2)(b) did not know what they were referencing. § 87(2)(b) was then quickly handcuffed and put in the police van.

The officers told § 87(2)(b) that they were waiting for an ambulance and § 87(2)(b) stated that he was not going to get into the ambulance. The officers then called for back-up and told § 87(2)(b) that he could have a seizure if he did not go to the hospital. § 87(2)(b) continued to argue that he did not have anything in his mouth nor did he swallow anything, therefore, he did not have to go to the hospital. While they waited for the ambulance, § 87(2)(b)'s friend, § 87(2)(b), exited the building and told the officers that § 87(2)(b) came from his residence. The officers claimed they saw § 87(2)(b) go in the building then immediately exit.

Identified via investigation, PO Osvaldo Castillo (described as a Hispanic man with light skin and in his thirties) and PO Saidul Islam (described as a short Middle Eastern man with dark skin) arrived. PO Islam used his asp to twist § 87(2)(b)'s leg to pull him out of the van. As he did this, Sgt. Figueroa, PO Kashinsky, and PO Castillo tried to lift § 87(2)(b) up and out of the van. § 87(2)(b) said that he agreed to go, but they kept pulling him. After a couple minutes, § 87(2)(b) was pulled out of the van, strapped onto a gurney and taken to § 87(2)(b) where he received methadone pills. He was then brought to the precinct.

Statements Made to IAB (encl. C4)

On August 30, 2012, § 87(2)(b) contacted IAB and stated that Sgt. Figueroa and his partner, PO Kashinsky, beat up her father. § 87(2)(b) was walking through the Marlboro Housing Complex when the officers exited their vehicle and accused him of swallowing heroine. § 87(2)(b) was not initially present, but she saw the cop cars and came outside to see the officers searching her father. When the officers did not find anything they accused § 87(2)(b) of swallowing drugs. The officers then handcuffed § 87(2)(b) and led him to their car. In the car, Sgt. Figueroa and PO Kashinsky swung at § 87(2)(b) and Sgt. Figueroa punched him. § 87(2)(b) was unsure where the punch landed because the officers ordered her to stand back or she was going to be arrested. One officer told § 87(2)(b) that he was going to break § 87(2)(b)'s jaw. The officers called an ambulance to transport § 87(2)(b) to the hospital.

Attempts to Contact Civilians (encl. H1-H9)

Five attempts to contact § 87(2)(b) via phone were made between September 7, 2012 and October 18, 2012 and messages were left each time. On February 21, 2013, the IAB intake CD was received and revealed an additional number for § 87(2)(b). Five attempts were made to this number between February 21, 2013 and March 14, 2013 and messages were left each time. Two unreturned letters were sent on September 7, 2012 and September 17, 2012. A search of the New York City Inmate Tracking System revealed that § 87(2)(b) is not currently incarcerated. As of the date of this report, § 87(2)(b) has not contacted the CCRB to pursue her complaint.

NYPD Statements:

Subject Officer: SGT. MIGUEL FIGUEROA

- *Sgt. Figueroa, a Hispanic man with brown hair and brown eyes, stands 5'6" tall and weighs 190 pounds. He was § 87(2)(b) years old at the time of the incident.*
- *Sgt. Figueroa worked from 7:15 p.m. on August 29, 2012 until 4:12 a.m. on August 30, 2012 and was assigned to Precinct Conditions with PO Scott Kashinsky. He was in uniform and assigned to marked van #9319*

Memo Book (encl. D1-D4)

August 30, 2012, 12:05 a.m., one, male, black, § 87(2)(b) stopped in the vicinity of § 87(2)(b) § 87(2)(b), suspected of criminal trespass. 12:07 a.m., one under by PO Kashinsky. 1:00 a.m., notified sick desk in regards to exposure number as perpetrator spat at myself and PO Kashinsky. 6:00 a.m., called IAB and provided § 87(2)(b) name. Official diagnosis is multiple substance abuse and marijuana and cocaine ingestion.

Statements to IAB (encl. G4)

The IAB intake CD revealed that Sgt. Figueroa made the following statements to IAB personnel in the early morning of August 30, 2012.

Sgt. Figueroa and PO Kashinsky were going to question § 87(2)(b) based on suspicion of criminal trespass. As they approached, it appeared that § 87(2)(b) put a controlled substance into his mouth. The officers asked § 87(2)(b) if they could see his mouth and § 87(2)(b) complied while moving his tongue around. It appeared that there was a glassine packet on the roof of his mouth. When the officers told § 87(2)(b) that they noticed the packet, he began to chew then swallow the substance. The officers called an ambulance so § 87(2)(b) could be transported to the hospital and § 87(2)(b) refused and stated he wanted to go directly to the precinct. The officers held § 87(2)(b) in their van until more officers and EMS arrived. When EMS arrived, the officers tried to get § 87(2)(b) out of the van, but he resisted and spat at them. Eventually they were able to pull him out and onto a stretcher. He was brought to § 87(2)(b) for ingesting narcotics and not for injuries sustained as a result of the interaction.

Supporting Deposition – Trespass in a Dwelling and Resisting Arrest (encl. F4-F9)

In this document completed by Sgt. Figueroa, boxes are checked indicating that § 87(2)(b) resisted arrest by flailing his arms, going limp, and refusing to be handcuffed.

Supporting Deposition – Criminal Possession of a Controlled Substance (encl. F10-F13)

In this document completed by Sgt. Figueroa, boxes are checked indicating that Sgt. Figueroa concluded that the substance was a controlled substance because he had professional training as a police officer in identifying controlled substances, had previously seized controlled substances

(which were later to be confirmed as such by a laboratory), and had professional experience and was familiar with common methods of packaging controlled substances.

CCRB Statement (encl. D6-D8)

Sgt. Figueroa was interviewed at the CCRB on April 2, 2013.

On August 29, 2012, at approximately 11:40 p.m., Sgt. Figueroa and PO Kashinsky were in their vehicle when they passed by the rear entrance to § 87(2)(b) § 87(2)(b) § 87(2)(b). As they drove by, they saw a known recidivist, § 87(2)(b), enter the building. § 87(2)(b)'s information was posted at the PSA1 stationhouse because he had a lengthy history of drug related arrests. Sgt. Figueroa never participated in any of these arrests, but was partnered with or supervised officers who had. Sgt. Figueroa knew from the postings that § 87(2)(b) did not live at this location, which he knew from his professional experience was drug prone. Sgt. Figueroa and PO Kashinsky parked their van, exited, and approached the building. § 87(2)(b) was in the building for less than a minute when he exited through the same doorway that he entered. Sgt. Figueroa and § 87(2)(b) saw each other and § 87(2)(b) placed an object, appearing to be a packet of drugs, into his mouth. § 87(2)(b) did not appear to have anything else in his hands or on his person.

PO Kashinsky and Sgt. Figueroa stopped § 87(2)(b) two steps outside the door, which was still open. Sgt. Figueroa asked him what he was doing at the building as it was city-owned and there were strict "No Trespassing" rules. § 87(2)(b) said he was watching a game with a friend and provided an apartment number. PO Kashinsky entered to verify the address and Sgt. Figueroa engaged § 87(2)(b) in further conversation about why he was at the location. Sgt. Figueroa knew § 87(2)(b) was lying because he made his story sound as if he had been in the building longer than the one minute he actually was. Sgt. Figueroa asked § 87(2)(b) to open his mouth. § 87(2)(b) cooperated and Sgt. Figueroa saw a glassine package, believed to be heroine, tucked in the roof of § 87(2)(b)'s mouth. The area was well lit and Sgt. Figueroa did not further illuminate § 87(2)(b)'s mouth to see the object. Sgt. Figueroa told § 87(2)(b) to spit out the object. § 87(2)(b) tried to spit, but nothing came out and Sgt. Figueroa realized that he swallowed the package. Sgt. Figueroa never removed his asp or baton from his utility belt and never held it up to § 87(2)(b) while saying, "Open your mouth or I will put this in there."

While this was happening, PO Kashinsky exited the building and confirmed that § 87(2)(b) had not visited the apartment he said he did and the occupant of that apartment did not know who § 87(2)(b) was. Sgt. Figueroa told § 87(2)(b) that he was under arrest and as he tried to handcuff § 87(2)(b), § 87(2)(b) flailed his arms and stepped in between Sgt. Figueroa and PO Kashinsky as if he were trying to leave. PO Kashinsky did not put his hand around § 87(2)(b)'s neck. PO Kashinsky never said that he should have punched § 87(2)(b) in the face. Both officers took § 87(2)(b) to the ground by grabbing his hands and pulling him downward. After struggling for one minute, § 87(2)(b) was successfully handcuffed. They lifted § 87(2)(b) to a standing position and escorted him to their van, but he continued to be physically uncooperative by going limp. The officers successfully placed him into the van by pushing him from behind. § 87(2)(b) was seated in the backseat and Sgt. Figueroa and PO Kashinsky stayed directly outside and contacted EMS and further units. Because § 87(2)(b) was suspected of swallowing a packet of drugs he had to be transported to a hospital.

An ambulance and PO Islam and PO Castillo arrived approximately ten minutes later and § 87(2)(b) was informed that he had to go to the hospital. He refused and EMS explained that he had no choice. § 87(2)(b) became irate and locked his feet under the seat in front of him. He then

spat directly at Sgt. Figueroa and PO Kashinsky. The officers stepped out of the way and did not take any action further to stop § 87(2)(b). All four officers reached from the van's side and back doors to try and dislodge § 87(2)(b)'s feet from under the seat, but § 87(2)(b) locked himself in place. It took approximately ten minutes to pull § 87(2)(b) out. None of the officers removed their asps or batons from their utility belts.

§ 87(2)(b) was strapped into the gurney because he continued to try and wiggle himself free. As they tried to place him into the ambulance, people who Sgt. Figueroa believed to be family members, appeared and yelled at the officers. The ambulance and the responding officers immediately transported § 87(2)(b) to the hospital and Sgt. Figueroa did not see him again that night. § 87(2)(b) never complained of injuries and was taken to the hospital because he was believed to have swallowed drugs and not because he was injured.

Witness Officer: PO SCOT KASHINSKY

- *PO Kashinsky, a white man with brown hair and brown eyes, stands 6'0" tall and weighs 240 pounds. He was § 87(2)(b) years old at the time of the incident.*
- *PO Kashinsky worked from 7:30 p.m. on August 29, 2012 until 4:05 a.m. on August 30, 2012 and was assigned to precinct conditions with Sgt. Miguel Figueroa. He was in uniform and assigned to a marked van.*

Memo Book (encl. D9-D15)

August 3, 2012, 12:05 a.m., one, black, male stopped at the rear of § 87(2)(b). Was seen entering and leaving the location in a short amount of time and linger in back doorway. Defendant was approached by officers and defendant put object in his mouth. The object appeared to be narcotics. Defendant then swallowed the object. Defendant was placed in handcuffs. Officers attempted to verify the apartment that defendant as visiting, but were unable to truthfully verify his address. 12:07 a.m., one under by PO Kashinsky. 12:15 a.m., called EMS for help since narcotics were swallowed. 12:05 a.m., EMS responder § 87(2)(b) van number 3108, ACR: § 87(2)(b) Perpetrator refused to go into the ambulance. 12:30 a.m., EMS lieutenant called. 12:40 a.m., EMS Lt. § 87(2)(b) came to scene. Perpetrators family at scene became loud and disorderly, cursing at officers. Second unit called. 12:50 a.m., It was determined that perpetrator could not refuse medical attention since he swallowed narcotics in police presence. Four officers and three EMS personnel had to restrain and force defendant to get into ambulance. Perpetrator spat at officers. 1:00 a.m., perpetrator in bus. PO Islam and PO Castillo transported to hospital.

Arrest Report § 87(2)(b) (encl. F1-F3)

In the arrest report PO Kashinsky notes that § 87(2)(b) was seen entering and leaving a NYCHA location in a short amount of time then lingered at the back door. When approached by the officers, § 87(2)(b) put an object into his mouth. When the officers inspected his mouth, the object was found to be consistent with methods common for packaging narcotics. § 87(2)(b) was told to spit object out but instead he swallowed it. § 87(2)(b) then resisted by flailing his arms about and going limp. While in the police vehicle, § 87(2)(b) spat at officers.

Criminal Trespass Fact Sheet (encl. F4-F9)

PO Kashinsky stated that the factors that led to the decision to approach and question § 87(2)(b) were that he entered and exited a location in a short amount of time. Then § 87(2)(b) was seen lingering at the back door. § 87(2)(b) was seen in the building for five minutes then observed for five minutes before officers approached him. The first question they asked was what § 87(2)(b)

was doing in the building. He said that he was visiting § 87(2)(b) in § 87(2)(b). PO Kashinsky then checked § 87(2)(b) and no one was there. § 87(2)(b) then changed his answer to § 87(2)(b).

CCRB Statement (encl. D17-D19)

PO Kashinsky was interviewed at the CCRB on April 23, 2013. § 87(2)(g)

PO Kashinsky saw § 87(2)(b) enter the front entrance of § 87(2)(b). As he and Sgt. Figueroa drove towards the back entrance, two minutes later, they saw § 87(2)(b) exit and linger in the doorway. § 87(2)(b) did not appear to have anything on his person nor did he behave suspiciously. PO Kashinsky wanted to approach § 87(2)(b) to see why he was in the building, why he left so quickly, and why he was lingering in the back. PO Kashinsky knew the building to be drug-prone, but did not know anything about § 87(2)(b) or his past.

As the officers were approximately ten feet from § 87(2)(b), § 87(2)(b) looked over at the officers then put a small baggie, of what appeared to be narcotics, in his mouth. PO Kashinsky asked § 87(2)(b) what he put in his mouth and § 87(2)(b) did not answer. PO Kashinsky asked why he was in the building and § 87(2)(b) said that he was visiting a friend in § 87(2)(b). § 87(2)(b)'s speech was gargled, which indicated to PO Kashinsky that § 87(2)(b) was still holding something in his mouth. PO Kashinsky went to the apartment to verify the information while Sgt. Figueroa stayed with § 87(2)(b). PO Kashinsky was in the building for less than ten minutes when the individual in § 87(2)(b) confirmed that he did not know § 87(2)(b). PO Kashinsky went back outside and relayed this information to Sgt. Figueroa who was still standing with § 87(2)(b). § 87(2)(b) then said the apartment was § 87(2)(b). § 87(2)(b) was ordered to open his mouth, which he did and revealed a glassine bag. Neither officer removed their asps or batons from their utility belt and did not threaten § 87(2)(b) with one. Neither officer put his hand around § 87(2)(b)'s neck nor say that he should have punched § 87(2)(b).

The officers brought § 87(2)(b) to their van and PO Kashinsky sat with him and called for an additional unit. Some of § 87(2)(b)'s family members gathered around the area and began to yell and scream at the officers while banging on the side of the van. They were given verbal orders to back away, but they did not respond. No further action was taken against any of the family members. After approximately twenty minutes, EMS arrived and § 87(2)(b) resisted their efforts to get him out of the van by spitting and cursing. After a few minutes, all four officers and the EMS workers pulled § 87(2)(b) out of the van and strapped him to a gurney. He was then transported to § 87(2)(b) and PO Kashinsky went back to the precinct.

Medical Records

ACR (encl. E2-E3)

§ 87(2)(b) was transported to § 87(2)(b) on § 87(2)(b). The narrative notes that the patient refused to let EMS evaluate him. The presumptive diagnosis was narcotics ingestion and muscular skeletal pain.

Medical Record from § 87(2)(b) (encl. E4-E36)

§ 87(2)(b) was diagnosed with opioid dependence and cocaine and cannabis abuse. He displayed signs of confusion and disorientation and tested positive for cocaine and opiates in his system.

Arrest for Incident and Disposition (encl. G2)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings (encl. G1)

- As of April 17, 2013, four months after the filing deadline, § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident.

Civilian's Criminal History (encl. G2-G41)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians' CCRB History (encl. A3-A4)

- This is the second CCRB complaint filed by § 87(2)(b) on behalf of § 87(2)(b):
 - § 87(2)(b)

Subject Officers' CCRB History (encl. A1-A2)

- Sgt. Figueroa has been a member of the service for seven years and there are no substantiated CCRB allegations against him.
- PO Kashinsky has been a member of the service for four years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

Sgt. Figueroa and PO Kashinsky acknowledged verbally and physically interacting with § 87(2)(b). § 87(2)(g)

Allegations Not Pled

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged in her call to IAB that officers swung at and punched § 87(2)(b). § 87(2)(b) did not repeat this during his CCRB interview. He stated that PO Islam wrapped his asp around § 87(2)(b)'s feet to pull him out of the van. He also stated that the officers kept pulling

him even though he agreed to go to the hospital. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Sgt. Miguel Figueroa threatened § 87(2)(b) with the use of force.

Allegation B – Force: PO Scot Kashinsky used physical force against § 87(2)(b):

Allegation C – Abuse of Authority: PO Scot Kashinsky threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that after PO Kashinsky went into the building, Sgt. Figueroa took out his asp, held it up towards § 87(2)(b)'s face and said, "Open your mouth or I'll put this in there." As this was happening, PO Kashinsky allegedly exited the building and Sgt. Figueroa informed him that § 87(2)(b) had something in his mouth. § 87(2)(b) alleged that PO Kashinsky then put his right thumb and index finger in a reverse "L" and squeezed around § 87(2)(b)'s neck, but his breathing was never restricted. PO Kashinsky then allegedly said that he should have punched § 87(2)(b) in the face. Sgt. Figueroa denied ever removing his asp or any other instrument from his belt and PO Kashinsky stated that when he exited the building, he did not see any object in Sgt. Figueroa's hand nor hear him make any threats. Both officers denied that PO Kashinsky ever put his hands around § 87(2)(b)'s neck or make any reference to punching him. § 87(2)(b) and § 87(2)(b)'s family members did not come outside until after this time had passed.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date